

ORDINANCE # 07-05-445

AN ORDINANCE BY THE BOARD OF COUNTY COMMISSIONERS FOR  
FREDERICK COUNTY, MARYLAND ("BOCC") TO ESTABLISH A NEW CHAPTER  
1-7.2 OF THE FREDERICK COUNTY CODE, 2004 ("CODE") TO GOVERN PUBLIC  
ETHICS RELATING TO LOBBYING

PREAMBLE

WHEREAS, §15-803(3) of the State Government Article ("SG") of the  
Annotated Code of Maryland and §19A.04 03 01.A. of the Code of Maryland  
Regulations ("C.O.M.A.R.") require each county to enact provisions to govern the  
public ethics of local officials relating to lobbying, and

WHEREAS, SG §15-806 requires that the provisions enacted by a county  
pertaining to lobbying be substantially similar to the provisions of SG §§15-701  
through 715; and

WHEREAS, pursuant to SG §15-205(b)(1)(iii), the State Ethics Commission  
adopted a Model Local Ethics Law, set forth in C O.M.A.R Title 19A, Subtitle 04,  
Appendix A, as a guide for larger counties and municipalities ("Model Local Ethics  
Law"); and

WHEREAS, the BOCC desires that the provisions of the Code pertaining to  
lobbying should more closely resemble the provisions of SG §15-701 through 715  
and the Model Local Ethics Law,

NOW THEREFORE, BE IT ORDAINED BY THE BOCC THAT

§1. *Incorporation of Preamble* - The preamble is incorporated herein by  
reference.

§2 *Enactment of New Chapter 1-7.2 of the Code* - A new chapter 1-7.2 of the  
Code is hereby enacted to read as follows

## **"Chapter 1-7.2**

### **LOBBYING**

#### *Statement of purpose –*

The BOCC enacts this chapter to enable the public to know the amounts paid, received and spent for the purpose of influencing BOCC action and Planning Commission action.

### **ARTICLE I. IN GENERAL**

#### **§1-7.2-1. Definitions.**

The words used in this chapter shall have their normal accepted meanings except as set forth below:

(a) *BOCC.* - "BOCC" shall mean the Board of County Commissioners of Frederick County, Maryland.

(b) *Compensation* (1) "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person from an employer for services rendered.

(2) For purposes of this chapter, if lobbying is only a portion of a person's employment, "compensation" means a prorated amount that is based on the time devoted by the person to lobbying compared to the time devoted to other employment activities.

(c) *Contribution.* – "Contribution" shall have the meaning set forth in §1-101(o) of the Election Law Article of the Annotated Code of Maryland, as amended.

(d) *County Official.* - "County Official" means a member or member-elect of the BOCC and a member of the Planning Commission

(e) *Employer*. - "Employer" means an entity that pays or agrees to pay compensation to another entity for services rendered.

(f) *Entity*. - "Entity" means:

- (1) a person, or
- (2) a government or instrumentality of government

(g) *Ethics Commission*. - "Ethics Commission" means the Frederick County Ethics Commission established pursuant to §1-7.1-3 of the Code.

(h) *Lobbying*. - "Lobbying" means performing any act that requires registration under §1.7.2-2 of this chapter.

(i) *Official action* (1) "Official action" means an action or nonaction relating to a resolution, ordinance, appointment, report, appropriation, expenditure, recommendation or other matter within the jurisdiction of the BOCC or the Planning Commission.

(2) "Official action" includes the following actions

- (i) introduction;
- (ii) sponsorship;
- (iii) consideration;
- (iv) debate;
- (v) amendment;
- (vi) passage;
- (vii) defeat; or
- (viii) approval.

(j) *Person*. - "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, limited liability partnership, limited partnership, limited liability limited partnership, limited liability company, corporation, firm, or association.

(k) *Planning Commission* – "Planning Commission" means the Frederick County Planning Commission established by §1-13-16 of the Code.

(l) *Regulated lobbyist* - "Regulated lobbyist" means an entity that is required to register with the Ethics Commission pursuant to §1-7.2-2(a).

(m) *State*. - "State" means the State of Maryland.

**§1-7.2-2. Generally.**

(a) *Registration required* - Unless exempted under subsection (b) of this section, an entity shall register with the Ethics Commission as provided in this subtitle, and shall be a "regulated lobbyist" for the purposes of this chapter, if, during a fiscal year ending June 30, the entity

(1) for the purpose of influencing official action:

(i) communicates with one or more County Officials in the presence of one or more County Officials, and

(ii) earns a cumulative amount of at least \$2,500 as compensation, for all such communications and activities relating to the communications during the reporting period;

(2) spends a cumulative amount of at least \$2,000, including postage, for the express purpose of soliciting others to communicate with one or more County Officials to influence official action; or

(3) spends a cumulative amount of at least \$2,500 to provide compensation to one or more entities required to register under this subsection.

(b) *Exempted activities.* - (1) The following activities are exempt from regulation under this chapter:

(i) appearances as part of the official duties of an elected or appointed official or employee of the State, a political subdivision of the State, or the United States, to the extent that the appearance is not on behalf of any other entity;

(ii) actions of a member of the news media, to the extent the actions are in the ordinary course of gathering and disseminating news or making editorial comment to the general public;

(iii) representation of a bona fide religious organization to the extent the representation is for the purpose of protecting the right of its members to practice the doctrine of the organization;

(iv) appearances as part of the official duties of an officer, director, member, or employee of an association engaged exclusively in representing counties or municipal corporations, to the extent that the appearance is not on behalf of another entity; or

(v) actions as part of the official duties of a trustee, an administrator, or a faculty member of a nonprofit independent college or university in the State, provided the official duties of the individual do not consist primarily of attempting to influence official action

(2) The following activities are exempt from regulation under this chapter if the individual engages in no other acts during the reporting period that require registration:

(i) professional services in drafting proposed legislation or in advising clients on the construction or effect of proposed or pending legislation,

(ii) appearances at a meeting of the BOCC at the specific request of the BOCC;

(iii) appearances at a meeting of the Planning Commission at the specific request of the Planning Commission;

(iv) testifying at a meeting of the BOCC at the specific request of a regulated lobbyist, if the witness notifies the BOCC that the witness is testifying at the request of the lobbyist.

(v) testifying at a meeting of the Planning Commission at the specific request of a regulated lobbyist, if the witness notifies the Planning Commission that the witness is testifying at the request of the lobbyist.

*(c) Limited exemptions - Employer of regulated lobbyist*

(1) Except for providing the authorization required by §1-7.2-3 of this chapter and the report required by §1.7.2-5 of this chapter, an entity that compensates one or more regulated lobbyists, and that reasonably believes that all expenditures requiring registration will be reported by the regulated lobbyist or lobbyists, is exempt from the registration and reporting requirements of this chapter if the entity engages in no other act that requires registration.

(2) If a regulated lobbyist compensated by an entity that is exempt under paragraph (1) of this subsection fails to report the information required by this chapter, the entity immediately shall become subject to the registration and reporting requirements of this chapter.

## COMMENT to §1-7.2-2

SG §15-701(a)(1), (5) & (6) and §7(a) of the Model Local Ethics Law serve as a guide for subsection (a). SG §15-701(b)(1) & (2) and §7(l) of the Model Local Ethics Law serve as a guide for subsection (b). SG §15-701(c) and §7(m) of the Model Local Ethics Law serve as a guide for subsection (c). As SG §§15-701 through 715 and the Model Local Ethics Law do not contain exceptions for attorneys, other professionals, or charitable and nonprofit organizations, none are included here.

### **§1-7.2-3. Authority to lobby.**

#### *(a) Written authorization.*

(1) An entity that engages a regulated lobbyist for the purpose of lobbying shall provide a signed authorization for the regulated lobbyist to act.

(2) If the entity is a corporation, an authorized officer or agent, other than the regulated lobbyist, shall sign the authorization.

*(b) Same - Terms and conditions.* - The authorization to act required by subsection (a) of this section shall include:

(1) the full legal name and business address of the entity and of the regulated lobbyist;

(2) subject to subsequent modification, the period during which the regulated lobbyist is authorized to act; and

(3) the proposal or subject on which the regulated lobbyist represents the entity.

## COMMENT to §1-7.2-3

SG §15-702 and §7(c) of the Model Local Ethics Law serve as a guide for this section.



#### **§1.7.2-4. Registration with Ethics Commission.**

(a) *Registration required* (1) At the times specified in subsection (d) of this section, each regulated lobbyist shall register with the Ethics Commission.

(2) A regulated lobbyist shall register separately for each entity that has engaged the regulated lobbyist for lobbying purposes.

(b) *Contents* - Each registration shall include, if applicable, the following information:

(1) the regulated lobbyist's name and permanent address;

(2) the name and permanent address of each other regulated lobbyist that will be lobbying on the regulated lobbyist's behalf;

(3) the name, address, and nature of business of the entity, if any, that has engaged the regulated lobbyist for lobbying purposes, accompanied by a statement indicating whether, because of the filing and reporting of the regulated lobbyist, the compensating entity is exempt under §1-7.2-2(c) of this chapter; and

(4) the identification, by formal designation, if known, of the matters on which the regulated lobbyist expects to perform acts, or to engage another regulated lobbyist to perform acts, that require registration under this chapter

(c) *Filing of authorization statement.* - If applicable, each registration shall include the authorization required by §1-7 2-3 of this chapter.

(d) *Registration filing - Time.* (1) A regulated lobbyist who is not currently registered shall register within five (5) days after first performing an act that requires registration under this chapter.

(2) A regulated lobbyist shall file a new registration on or before July 1 of each year if, on that date, the regulated lobbyist is engaged in lobbying.

(e) *Fee.* (1) Each registration shall be accompanied by a fee of \$50.

(2) The fee shall be credited to the Lobbyist Registration Fund established under §1-7.2-10 of this chapter

(f) *Termination of registration.* (1) Except as provided in paragraph (2) of this subsection, each registration terminates on the earlier of.

(i) the June 30 following the filing of the registration; or

(ii) an earlier termination date specified in an authorization filed with respect to that registration under §1-7.2-3 of this chapter.

(2) A regulated lobbyist may terminate the registration before the date specified in paragraph (1) of this subsection by.

(i) ceasing all activity that requires registration; and

(ii) after ceasing activity in accordance with item (i) of this paragraph

1. filing a notice of termination with the Ethics Commission; and

2 filing all reports required by this chapter within thirty (30) days after the filing of the notice of termination.

#### COMMENT to §1-7.2-4

SG §15-703 and §7(a), (c), (d) & (e) of the Model Local Ethics Law serve as a guide for this section.

#### **§1-7.2-5. Reports.**

(a) *Generally.* (1) A regulated lobbyist shall file with the Ethics Commission, under oath and for each registration, a separate report concerning the regulated lobbyist's lobbying activities by July 31 of each year, to cover the period from July 1 of the previous year through June 30 of the current year.

(2) If the regulated lobbyist is not an individual, an authorized officer or agent of the regulated lobbyist shall sign the report

(3) If a prorated amount is reported as compensation, it shall be labeled as prorated.

(b) *Required information.* - A report required by this section shall include: (1) a complete, current statement of the information required under §1-7.2-4(b), and;

(2) total expenditures in connection with influencing official action in each of the following categories:

(i) total compensation paid to the regulated lobbyist;

(ii) publications that expressly encourage communication with one or more County Officials;

(iii) witnesses, including the name of each and the fee and expenses paid to each;

(iv) food and beverages for County Officials;

(v) food, beverages and incidental expenses for County Officials for meals and receptions to which all County Officials were invited;

(vi) food, lodging and scheduled entertainment for County Officials at meetings at which one or more County Officials were scheduled speakers or scheduled panel participants;

(vii) tickets and free admission extended to members or members – elect of the BOCC as a courtesy or ceremony to the office to attend charitable, cultural, and political events sponsored or conducted by the reporting entity to which all members or members – elect of the BOCC were invited; and

(viii) other gifts to County Officials.

(3) as to expenditures reported in paragraph (2) (v), (vi) and (vii) of this subsection, the date, location, and total expense of the regulated lobbyist for each meal, reception, event, or meeting

#### COMMENT TO §1-7 2.5

SG §15-704 and §7(g) of the Model Local Ethics Law serve as a guide for this section.

#### **§1-7.2-6. Additional Reports.**

The Ethics Commission may require a regulated lobbyist to file any additional report the Ethics Commission determines to be necessary.

#### COMMENT TO §1-7 2-6

SG §15-711 and §7(i) of the Model Local Ethics Law serve as a guide for this section.

#### **§1-7.2-7. Public Inspection of Registrations and Reports.**

Except as provided in §1-7.2-8, all registrations and reports filed pursuant to this chapter shall be made available for public inspection during normal office hours

Copies shall be made available in accordance with the provisions of §10-620 of the Maryland Public Information Act.

#### COMMENT TO §1-7 2-7

§7(j) of the Model Local Ethics Law serves as a guide for this section.

#### **§1-7.2-8. Notice to County Official named in report.**

(a) If a report under §1-7.2-5(b) contains the name of a County Official or the name of a County Official's immediate family, the Ethics Commission shall.

(1) notify the County Official within 30 days of receipt of the report by the Ethics Commission; and

(2) keep the report confidential for 60 days after its receipt

(b) Within 30 days after receiving the notice, the County Official may submit a written exception to the inclusion in the report of the name of the County Official or member of the County Official's immediate family.

#### COMMENT TO §1-7.2-8

SG §15-712(b) and §7(h) of the Model Local Ethics Law serve as a guide for this section. Its purposes are to give a County Official a reasonable opportunity to file an exception to the contents of a regulated lobbyist's report.

#### **§1-7.2-9. Prohibitions.**

A regulated lobbyist may not:

(a) be engaged for lobbying purposes for compensation that is dependent in any manner on:

(1) the enactment or defeat of official action, or

(2) any other contingency related to official action.

(b) while engaging in lobbying activities, knowingly make to a County Official a statement of material fact relating to lobbying activity that the regulated lobbyist

knows to be false

(c) engage in lobbying activity without being properly registered as a regulated lobbyist in accordance with §1.7 2-2 of this chapter.

(d) if the regulated lobbyist is an individual, engage in any charitable fund-raising activity at the request of a County Official, including soliciting, transmitting the solicitation of, or transmitting a charitable donation.

(e) while engaging in lobbying activities on behalf of an entity, knowingly conceal from a County Official, the identity of the entity.

(f) while engaged in lobbying activities on behalf of an entity, attempt to influence a County Official by either:

(1) promising future contributions to the County Official; or

(2) threatening to withhold future contributions from the County Official.

#### COMMENT TO §1-7.2-9

SG §15-713(1) and §7(f) of the Model Local Ethics Law serve as a guide for subsection (a). SG §15-713(5), (6), (10) & (12) serve as guides for subsections (b) through (e). Prince George's County Council Bill #17-1990 serves as a guide for subsection (f). In Opinion #90-018, the Maryland Attorney General opined that a similar enactment was not preempted by the State Election Law

**§1-7.2-10. Lobbyist Registration Fund.**

(a) *Fund established.* (1) There is a Lobbyist Registration Fund.

(2) The Fund includes all fees collected under this chapter.

(b) *Fund to be non-lapsing.* - The Fund is a continuing, non-lapsing fund.

(c) *Administration of Fund.*

(1) The County Treasurer shall collect, and the Director of Finance shall hold and account for, the Fund.

(2) The Fund shall be invested and reinvested in the same manner as other county funds.

(3) Expenditures from the Fund shall be made in accordance with an appropriation approved by the Board of County Commissioners in the annual budget.

(d) *Uses of Fund.* - The Fund shall be used to defray the expenses of administering this chapter.

**COMMENT TO §1-7.2-10**

SG §15-210 serves as a guide for this section.

### **§1-7.2-11. Chapter additional and supplemental.**

The requirements set forth in this chapter are additional and supplemental to the provisions of Chapter 1-7.1. An act by a person may be reportable under the provisions of both chapters. In that event, the person must comply with the provisions of both chapters.

#### **COMMENT TO §1-7.2-11**

This chapter and §1-7.1-6 both address "lobbying" but in very different ways. In general, persons who desire to influence County Officials may do so by: i) communicating with a County Official; ii) bestowing things of value upon a County Official; or iii) compensating others to communicate with a County Official.

The first form of influence is not subject to regulation by this chapter or Chapter 1-7.1.

The provisions of §1-7 1-6 govern expenditures over \$500 for food, entertainment and gifts to a very broad range of County Officials and county employees. That section does not address compensation paid to lobbyists to influence the BOCC.

This chapter governs the third form of influence.



## ARTICLE II. ENFORCEMENT

### **§1-7.2-20. Cease and Desist Order.**

The Ethics Commission may issue a cease and desist order against any person found to be in violation of this chapter.

#### COMMENT TO §1-7.2-20

SG §15-405(c)(1) and §1-7.1-8(a) of the Code serve as a guide for this section

### **§1-7.2-21. Petition by Ethics Commission.**

To compel compliance with a cease and desist order, the Ethics Commission may file a petition in the Circuit Court for Frederick County.

#### COMMENT TO §1-7.2-21

SG §15-901 and §1-7.1-8(a) of the Code serve as a guide for this section.

### **§1-7.2-22. Criminal penalties.**

(a) *In general.* - A person who knowingly and willfully violates this chapter is guilty of a misdemeanor and on conviction is subject to a fine not exceeding One Thousand Dollars (\$1,000) or imprisonment not exceeding one (1) year or both.

(b) *Officers and partners.* - If the person is not an individual, each officer or partner who knowingly and willfully authorizes or participates in a violation of this chapter is guilty of a misdemeanor and on conviction is subject to the penalty specified in subsection (a) of this section

#### COMMENT TO §1-7.2-22

SG §15-903 and §8(b) of the Model Local Ethics Law serve as a guide for this section.

**§1-7.2-23. Civil Infractions.**

(a) *In General.* – A violation of this chapter shall also be a civil infraction. A fine not to exceed One Thousand Dollars (\$1,000) may be imposed for each civil infraction.

(b) *Procedure for Issuance of Citations.* – Civil infractions for violations of this chapter shall be prosecuted in the same manner and to the same extent as set forth for municipal infractions in Article 23A, §3(b) of the Annotated code of Maryland.

**COMMENT TO §1-7.2-23**

Section 2-2-29 of the Code of Public Local Laws of Frederick County authorizes the BOCC to provide that a violation of an ordinance is a civil offense.

**§1-7.2-24 Penalties for Late Filing.**

If a regulated lobbyist is required by this chapter to file a registration, report, notice or other paper, and if the registration, report, notice or other paper is filed late, then the regulated lobbyist shall pay a fee of Ten Dollars (\$10) for each late day, not to exceed a total of Two Hundred Fifty Dollars (\$250).

**COMMENT TO §1-7.2-24**

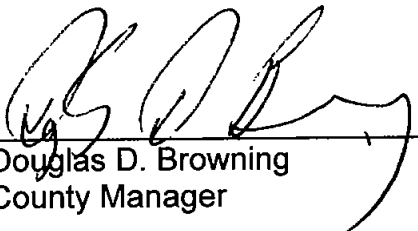
SG §15-405(g) serves as a guide for this section."

§3. *Comments* – The BOCC intends for the Comments appended to this Ordinance to be a useful aid in the interpretation and construction of this Ordinance.

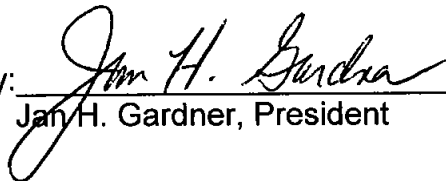
§4. *Effective Date.* - The provisions of this ordinance shall become effective at 12:01 a.m. on July 1, 2007. The first report by a regulated lobbyist shall be due July 31, 2008 for the year beginning July 1, 2007 through and including June 30, 2008.

The undersigned hereby certifies that the Board of County Commissioners of Frederick County, Maryland approved and adopted the foregoing Ordinance on the 20th day of February, 2007.

ATTEST:

  
\_\_\_\_\_  
Douglas D. Browning  
County Manager

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

By:   
\_\_\_\_\_  
Jan H. Gardner, President

LBT  
2-21-07